

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

GNAT BOOTY MUSIC, ET AL.,

Plaintiffs,

v.

No. 07-2219-BV

LEWIS D. CONLEY,

Defendant.

ORDER DENYING SECOND MOTION FOR DEFAULT JUDGMENT
WITHOUT PREJUDICE

Before the court is the second motion of the Plaintiffs for default judgment. The Plaintiffs originally filed a motion for default judgment on August 21, 2007. On August 22, 2007, the Clerk of the Court entered an Order denying this motion on the basis that the Plaintiffs had not yet requested an entry of default by the Clerk. (See Doc. No. 8.) That same day, the Plaintiffs filed the instant motion for default judgment, “request[ing] that the Clerk of the Court enter a judgment by default against the Defendant” (Pls.’ Mot. Default J. at 1.)

The Plaintiffs’ motion is premised on a misinterpretation of the Federal Rules of Civil Procedure. Rule 55(a) of the Federal Rules of Civil Procedure discusses the Clerk’s entry of default against a defendant.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party’s default.

See Fed. R. Civ. P. 55(a). Default judgment is discussed in Rule 55(b). Rule 55(b)(2) provides, in relevant part, that “the party entitled to a judgment by default shall apply to the court therefor” Thus, the Plaintiffs must *first* request that the Clerk enter default against the Defendant.

Only after the Clerk has entered *default* against the Defendant, may the Plaintiffs move the Court for *default judgment* against him.

For the reasons outlined above, the Plaintiffs' second motion for default judgment is hereby **DENIED**.

IT IS SO ORDERED this 24th day of August, 2007.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE